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OFFICE OF PETITIONS

In re Application of
Glen H. Lowe et al.
Application No. 09/371,463
Filed: August 10, 1999
Attorney Docket No. 3COM-2496.IP

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 4, 2003, to revive the above-identified application.

The petition is **Dismissed**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 28, 2002, which set a shortened statutory reply period of three-months. No extensions of time under the provisions of 37 CFR 1.136(a) have been obtained. Accordingly, the application became abandoned on May 29, 2002.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1) and (3).

As to item (1), the instant petition was accompanied by a request for continued examination (RCE) under the provisions of 37 CFR 1.114 and no submission. However, the filing of the RCE was improper since prosecution in the application had not closed. Prosecution in an application is closed when an application is under appeal, or the last Office action is a final action, a notice of allowance, or an action that otherwise closes prosecution in the application. Since the non-final Office action of February 28, 2002 did not close prosecution, the filing of an RCE was improper. Accordingly, the RCE filed on February 4, 2003 will not be processed. In view thereof, the \$750 RCE fee will be refunded to petitioner's deposit account. The response required for a grantable petition in this case must be either an Amendment, a Request for Reconsideration, or a Continuing Application. See MPEP section 711.03(c).

As to item (3), 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition will be construed as the statement required by 37 CFR 1.137(b) and petitioner must notify the Office if this is not a correct interpretation of the statement contained in the instant petition.

In order to expedite a decision on the petition, petitioner may wish to submit the response to the address indicated below and to the attention of the undersigned.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Office of Petitions
 Assistant Commissioner for Patents
 Box DAC
 Washington, DC 20231

By facsimile: (703) 308-6916
 Attn: Office of Petitions

By hand: Office of Petitions
 2201 South Clark Place
 Crystal Plaza 4, Suite 3C23
 Arlington, VA 22202

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.



Latrice Bond
Paralegal Specialist
Office of Petitions
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for Patent Examination Policy